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Honorable John V. Acosta

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d/b/a Halyard Health, Inc.*

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

BERENICE CAROL GLOVER, Personal
Representative For the Estate of Frank Wayne
Glover,

Plaintiff,

vs.

AVANOS MEDICAL, INC., dba HALYARD
HEALTH, INC., a Delaware Corporation;
OREGON HEALTH AND SCIENCE
UNIVERSITY, a Public Corporation; DR.
MARTIN SCHREIBER, MD; DR. ROBERT
MARTINDALE, MD; DR. THOMAS
KNOWLES, MD; DR. VALERIE
GRIFFETH, MD; DR. JAMES HEILMAN,
MD; DR. PHIL VAN, MD; DR. SHANA
KUSIN, MD; DR. JOHN MOORHEAD, MD;
DR. JACOB ANDERSON, MD; DR. INNA
SHNITER, MD; DR. SHANNON APPY, MD;
and DR. MOHAMUD DAYA, MD.,

Defendants.

Case No. 3:20-cv-01452-AC

**DEFENDANT AVANOS MEDICAL,
INC.'S ANSWER AND
AFFIRMATIVE DEFENSES**

DEMAND FOR JURY TRIAL

Defendant Avanos Medical, Inc., d/b/a Halyard Health, Inc. (hereinafter, “Avanos”) answers plaintiff’s complaint as follows:

ANSWER TO COMPLAINT

1.

As to paragraph 1, Avanos lacks knowledge and information sufficient to form a belief as to the truth of the allegations and, therefore, denies the allegations.

2.

As to paragraph 2, Avanos admits only that Berenice Carol Glover was appointed personal representative for the estate of Frank Wayne Glover. Avanos lacks knowledge and information sufficient to form a belief as to the truth of the remaining allegations in paragraph 2 and, therefore, denies the allegations.

3.

As to paragraph 3, Avanos admits only that it is a Delaware corporation with business contacts in Multnomah County, Oregon.

4.

As to paragraph 4, Avanos avers that the terms “at all material times” and “substantial” are vague, ambiguous, and improper allegations. Avanos denies that it operated and did business in Oregon under the name Halyard Health “at all material times,” and denies that it had “substantial” business contacts with Multnomah County, Oregon. Avanos admits only that for a period of time it was formerly known as Halyard Health, Inc. and that it has had business contacts in Multnomah County, Oregon.

5.

Avanos admits the allegations in paragraph 5.

6.

Paragraph 6 is not directed at Avanos, so no response is required. To the extent a response is required, Avanos lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 6 and, therefore, denies the allegations.

7.

Paragraph 7 is not directed at Avanos, so no response is required. To the extent a response is required, Avanos lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 7 and, therefore, denies the allegations.

8.

Paragraph 8 is not directed at Avanos, so no response is required. To the extent a response is required, Avanos lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 8 and, therefore, denies the allegations.

9.

Paragraph 9 is not directed at Avanos, so no response is required. To the extent a response is required, Avanos lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 9 and, therefore, denies the allegations.

10.

Paragraph 10 is not directed at Avanos, so no response is required. To the extent a response is required, Avanos lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 10 and, therefore, denies the allegations.

11.

Paragraph 11 is not directed at Avanos, so no response is required. To the extent a response is required, Avanos lacks knowledge and information sufficient to form a belief as to

the truth of the allegations in paragraph 11 and, therefore, denies the allegations.

12.

Paragraph 12 is not directed at Avanos, so no response is required. To the extent a response is required, Avanos lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 12 and, therefore, denies the allegations.

13.

Paragraph 13 is not directed at Avanos, so no response is required. To the extent a response is required, Avanos lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 13 and, therefore, denies the allegations.

14.

Paragraph 14 is not directed at Avanos, so no response is required. To the extent a response is required, Avanos lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 14 and, therefore, denies the allegations.

15.

Paragraph 15 is not directed at Avanos, so no response is required. To the extent a response is required, Avanos lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 15 and, therefore, denies the allegations.

16.

Paragraph 16 is not directed at Avanos, so no response is required. To the extent a response is required, Avanos lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 16 and, therefore, denies the allegations.

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17.

Paragraph 17 is not directed at Avanos, so no response is required. To the extent a response is required, Avanos lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 17 and, therefore, denies the allegations.

18.

Paragraph 18 is a statement that contains no allegations, so no response is required.

19.

As to paragraph 19, Avanos lacks knowledge and information sufficient to form a belief as to the truth of the allegations and, therefore, denies the allegations.

20.

As to paragraph 20, Avanos lacks knowledge and information sufficient to form a belief as to the truth of the allegations and, therefore, denies the allegations.

21.

As to paragraph 21, Avanos lacks knowledge and information sufficient to form a belief as to the truth of the allegations and, therefore, denies the allegations.

22.

As to paragraph 22, Avanos lacks knowledge and information sufficient to form a belief as to the truth of the allegations and, therefore, denies the allegations.

23.

Avanos denies the allegations in paragraph 23.

24.

As to paragraph 24, Avanos re-alleges paragraphs 1 through 4 and 19 through 23 of this answer as if fully set forth herein.

25.

Avanos denies the allegations in the second paragraph numbered 24, including subsections (A) and (B).

26.

Avanos denies the allegations in paragraph 25.

27.

As to paragraph 26, Avanos re-alleges paragraphs 1, 2, and 5 through 23 of this answer as if fully set forth herein.

28.

Paragraph 27 is not directed at Avanos, so no response is required. To the extent a response is required, the allegations are denied.

29.

Paragraph 28 is not directed at Avanos, so no response is required. To the extent a response is required, the allegations are denied.

30.

Avanos denies every allegation in the complaint, except as expressly admitted or alleged above.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

(Statute of Limitations)

31.

Plaintiff's claim against Avanos is barred, in whole or in part, by the applicable statute of limitations.

SECOND AFFIRMATIVE DEFENSE

(Statute of Ultimate Repose)

32.

Plaintiff's claim against Avanos is barred, in whole or in part, by the applicable statute of ultimate repose.

THIRD AFFIRMATIVE DEFENSE

(Federal Preemption)

33.

Plaintiff's claim against Avanos is barred by the doctrine of federal preemption.

FOURTH AFFIRMATIVE DEFENSE

(Fault of Others)

34.

Plaintiff's injuries and damages were caused by the sole and exclusive fault of others.

FIFTH AFFIRMATIVE DEFENSE

(Learned Intermediary)

35.

Plaintiff's claim against Avanos is barred because Avanos discharged any duty it owed by providing adequate instructions and warnings regarding proper use of, and risks associated with, the subject product to plaintiff's medical providers, who acted as learned intermediaries in determining whether and how to use the product in plaintiff's care and treatment.

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SIXTH AFFIRMATIVE DEFENSE

(Misuse)

36.

Plaintiff's claim against Avanos is barred because any injuries and damages were caused by an unforeseeable misuse of the subject product.

DEMAND FOR JURY TRIAL

37.

Avanos requests a jury trial.

WHEREFORE, having fully answered plaintiff's complaint and having stated its affirmative defenses, Avanos requests judgment in its favor, dismissal of plaintiff's claim with prejudice, and an award of Avanos' costs and disbursements incurred herein.

DATED this 1st day of September, 2020

LEWIS BRISBOIS BISGAARD & SMITH LLP

By: /s/ Emma P. Pelkey

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*Attorneys for Defendant Avanos Medical, Inc.
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CERTIFICATE OF SERVICE

I certify that I served the foregoing **DEFENDANT AVANOS MEDICAL, INC.'S ANSWER AND AFFIRMATIVE DEFENSES** on the following pro se plaintiff and attorneys by the method indicated below on the 1st day of September, 2020.

Pro Se Plaintiff:

Berenice Carol Glover
26736 NW Williams Canyon Road
Gaston, OR 97119
receivergroup@yahoo.com

☒ Via First Class Mail
☐ Via Federal Express
☐ Via Facsimile
☐ Via Hand-Delivery
☒ Via E-Mail

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☐ Via First Class Mail
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By: /s/ Emma P. Pelkey

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